

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6932

Petition of Verizon New England Inc., d/b/a)
Verizon Vermont, for arbitration of an)
amendment to interconnection agreements with)
Competitive Local Exchange Carriers and)
Commercial Mobile Radio service providers in)
Vermont, pursuant to Section 252 of the)
Communications Act of 1934, as amended, and)
the Triennial Review Order)

Order entered: 8/25/2004

ORDER RE: VERIZON MOTION OF WITHDRAWAL

I. INTRODUCTION

This Docket concerns a petition filed by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon") in which Verizon requests that the Board arbitrate a proposed modification to its interconnection agreements with certain named telecommunications carriers. On July 22, 2004, Verizon filed a Notice of Withdrawal of Petition for Arbitration as to Certain Parties. In its Notice, Verizon stated that it was withdrawing its petition as to all but eleven carriers that are identified in the Notice.¹

In this Order, I grant Verizon's withdrawal, subject to certain conditions. To the extent that Verizon originally sought to modify the interconnection agreements of the unlisted carriers, Verizon may withdraw its request to modify the agreements. However, any of the unlisted carriers that have, in this Docket, requested amendments to their interconnection agreements with

1. The interconnections that Verizon still seeks to amend are for the following carriers: ACC National Telecom Corp., AT&T Communications of New England, Inc., AT&T Wireless Services, Inc., CTC Communications Corp., Devon Mobile Communications L.P., International Telcom Ltd., MCImetro Access Transmission Services LLC, Paetec Communications Inc., RCN Operating Services, Inc., Sprint Communications Company L.P., and US WEST Interprise America Inc., d/b/a !NTERPRISE America. The remaining carriers — i.e., those for whom Verizon wishes to withdraw its arbitration request — are referred to in this Order as the "unlisted" carriers.

Verizon may continue to pursue those claims. In addition, because this Docket could require Board rulings on policy issues that will affect the interpretation of Verizon's obligations under the interconnection agreements that Verizon no longer seeks to modify, I will permit the unlisted carriers to continue to participate in this Docket.

II. POSITIONS OF THE PARTIES

Under its Notice, Verizon still seeks to amend the interconnection agreements for eleven named telecommunications service providers. However, Verizon states that it has concluded that the interconnection agreements for the unlisted carriers "contain specific terms permitting Verizon VT, upon specified notice, to cease providing unbundled network elements ("UNEs") that are no longer subject to an unbundling obligation under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51." Thus, states Verizon, amendment to those interconnection agreements is unnecessary.

The Competitive Carrier Group² ("CCG") opposes Verizon's notice arguing that the Board should reject Verizon's effort to "unilaterally and unlawfully remove parties from this Arbitration." CCG argues that Verizon may not unilaterally determine the parties' rights under each interconnection agreement and the Federal Communication Commission's *Triennial Review Order*.³ According to CCG, the Public Service Board ("Board"), rather than Verizon, should be making this interpretation. CCG also asserts that Verizon has failed to show that any of the interconnection agreements would permit Verizon to unilaterally discontinue the offering of UNEs. Furthermore, CCG maintains that, to the extent that Verizon could have excluded certain carriers from the arbitration, Verizon had waived such a claim. In addition, CCG argues that Verizon's petition for arbitration eliminated the need for carriers to bring their own petitions, so that it would be inequitable to dismiss these parties. Finally, CCG states that the arbitration includes not only Verizon's issues, but also the claims by other parties to interconnection

2. A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Equal Access Networks LLC, IDT America Corporation, KMC Telecom V Inc., XO Communications, Inc., and XO Long Distance Services, Inc.

3. Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (generally referred to as the "*Triennial Review Order*"), *vacated in part and remanded, United States Telecom Association v. FCC* 359 F.3d 554 (D.C.Cir. 2004) ("*USTA II*").

agreements that those agreements need to be modified to impose additional obligations on Verizon.

In response, Verizon asserts that CCG's arguments are without merit. First, Verizon argues that its reasoning for withdrawing the proposed amendments with respect to most parties — Verizon's determination that such an amendment is not needed — is not before the Hearing Officer at the present time. Verizon maintains that it is not necessary to determine that its interpretation is correct in order to permit it to withdraw its arbitration request. Verizon also maintains that the Board can and should grant the requested relief even though some parties have proposed new contract language. According to Verizon, the filing of this new language in the form of a response to the arbitration petition is not sufficient; instead, each party should have filed its own arbitration petition.

III. DISCUSSION

I conclude that Verizon may withdraw its Petition for Arbitration as it relates to the unlisted carriers, subject to two limitations explained below. Verizon initiated this proceeding seeking to modify those interconnection agreements (as well as the remaining eleven agreements) to incorporate changes that Verizon maintains are required by the *Triennial Review Order*. If Verizon no longer desires such a change to some of the agreements, for whatever reason, this Board no longer has any party advocating revisions to those agreements on the issues raised by Verizon. Parties may (and apparently do) differ as to the meaning of the language in the existing agreements, but the purpose of this proceeding is not to interpret existing agreements. Rather, the Board opened this Docket to arbitrate, under Section 252(b) of the federal Telecommunications Act of 1996 (the "Act"), proposed amendments to the interconnection agreements. With Verizon's decision to no longer seek changes to certain agreements, it is appropriate to allow Verizon to withdraw its petition to modify the interconnection agreements with the unlisted carriers.

I am not persuaded by CCG's argument that I must reject Verizon's notice of withdrawal and consider whether Verizon can change unbundling and interconnection requirements under the existing terms and conditions of the "unlisted" agreements. By allowing Verizon to

withdraw, I take no position on the merits of Verizon's claims that the interconnection agreements are self-executing and that Verizon may make modifications to interconnection terms and conditions (including the terms and conditions for UNEs) without actually changing the agreements. The purpose of this proceeding is to arbitrate proposed changes to interconnection agreements, not to interpret language in existing agreements to which no party seeks changes. Accordingly, CCG's comments provide no basis for denying Verizon's withdrawal request. I note that if Verizon seeks to unilaterally modify its obligations under an existing interconnection agreement based upon its view of the requirements of that agreement, the other party may ask the Board for relief, at which time the Board will address the issue.

I also do not accept CCG's claim that Verizon, by bringing this petition, has waived its right to argue that the agreement is self-executing and was intended to prospectively incorporate federal law. CCG has cited no case law to support its argument, nor has it shown why Verizon should be obligated to arbitrate a change to an interconnection agreement that it no longer seeks. CCG also has not shown that Verizon's withdrawal is somehow unfair to the companies that comprise CCG.

As stated above, I place two limitations upon my decision to permit Verizon to withdraw its petition as to certain parties. First, this Docket now includes not only the specific issues presented in Verizon's petition. In their responses to Verizon's arbitration petition (under Section 252(b)(3)), several parties have raised to additional issues that have been unresolved after negotiations. These parties requested that the Board arbitrate these issues — which they assert include clarifications to Verizon's existing obligations — and direct the parties to modify the interconnection agreements to reflect these duties. Verizon maintains that by withdrawing its petition as to the "unlisted" parties, these issues are no longer present. I do not agree. Section 252(b) contemplates that the party that does not request arbitration may raise additional issues in its response. Moreover, subsection (b)(4)(C) of that section specifically states that the Board "shall resolve each issue set forth in the petition *and the response* . . ." (Emphasis added.) This makes clear that, as to those parties that raised additional issues for arbitration in their responses,

the Board should continue to arbitrate those issues. Verizon's withdrawal may remove the issues for which Verizon sought arbitration; it does not eliminate the issues raised in response.⁴

Second, I recognize that in the Board's arbitration of the remaining eleven interconnection agreements, the Board may need to interpret the *Triennial Review Order* and further define Verizon's interconnection and unbundling obligations based upon that Order. These interpretations of Verizon's responsibilities under Sections 251 and 252 of the Act and the Board's determination of any additional Verizon obligations under state law, other provisions of federal law, or through commitments made in other contexts, may affect Verizon's ability to change the price and availability of UNEs even under the "unlisted" agreements. In a multi-party arbitration such as that before the Board in this Docket, it is reasonable to allow these parties to continue to offer comments concerning Verizon's legal obligations. Accordingly, while I grant Verizon's motion, I will permit the unlisted carriers to remain parties.⁵

SO ORDERED.

Dated at Montpelier, Vermont, this 25th day of August, 2004.

s. George E. Young
George E. Young
Hearing Officer

OFFICE OF THE CLERK

FILED: August 25, 2004

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

4. Obviously, this ruling only affects the unlisted carriers that did raise additional issues in their responses.

5. At this time, I do not limit the scope of their participation. I do expect that their participation, if any, will be limited to the general policy and legal questions rather than the language of a specific interconnection agreement that relates only to the two parties to that agreement and does not touch on the broader obligations.